

1 AN ACT relating to trusts.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 386.175 is amended to read as follows:

4 (1) For the purposes of this section, the following definitions apply:

5 (a) "Current beneficiary" means a person who is a permissible distributee of trust
6 income or principal;

7 (b) "Original trust" means a trust established under an irrevocable trust instrument
8 pursuant to the terms of which a trustee has discretionary power to distribute
9 principal or income of the trust to or for the benefit of one (1) or more current
10 beneficiaries of the trust; and

11 (c) "Second trust" means a trust established under an irrevocable trust instrument,
12 the current beneficiaries of which are one (1) or more of the current
13 beneficiaries of the original trust. The second trust may be a trust created
14 under the same trust instrument as the original trust or under a different trust
15 instrument **or the original trust whose terms have been modified pursuant to**
16 **this section.**

17 (2) A trustee of an original trust may, without authorization by the court, exercise the
18 discretionary power to distribute principal or income to or for the benefit of one (1)
19 or more current beneficiaries of the original trust by appointing all or part of the
20 principal or income of the original trust subject to the power in favor of the trustee
21 of a second trust **or by modifying the terms of the original trust.** The trustee of the
22 original trust may exercise this power whether or not there is a current need to
23 distribute principal or income under any standard provided in the terms of the
24 original trust. The trustee's special power to appoint trust principal or income in
25 further trust under this section includes the power to create the second trust.

26 (3) The second trust may be a trust created or administered under the laws of any
27 jurisdiction, within or without the United States.

- 1 (4) The terms of the second trust shall be subject to all of the following:
- 2 (a) The beneficiaries of the second trust may include only beneficiaries of the
- 3 original trust;
- 4 (b) A beneficiary who has only a future beneficial interest, vested or contingent,
- 5 in the original trust cannot have the future beneficial interest accelerated to a
- 6 present interest in the second trust;
- 7 (c) The terms of the second trust may not reduce any fixed income, annuity, or
- 8 unitrust interest of a beneficiary in the assets of the original trust, including an
- 9 interest which is to take effect in the future;
- 10 (d) If any contribution to the original trust qualified for a marital or charitable
- 11 deduction for federal income, gift, or estate tax purposes under the Internal
- 12 Revenue Code, then the second trust shall not contain any provision that, if
- 13 included in the original trust, would have prevented the original trust from
- 14 qualifying for the deduction or that would have reduced the amount of the
- 15 deduction;
- 16 (e) If contributions to the original trust have been excluded from the gift tax by
- 17 the application of Sections 2503(b) and 2503(c) of the Internal Revenue Code,
- 18 then the second trust shall provide that the beneficiary's remainder interest in
- 19 the contributions shall vest and become distributable no later than the date
- 20 upon which the interest would have vested and become distributable under the
- 21 terms of the original trust;
- 22 (f) If any beneficiary of the original trust has a currently exercisable power of
- 23 withdrawal over trust property, then either:
- 24 a. The terms of the second trust shall provide a power of withdrawal in the
- 25 second trust identical to the power of withdrawal in the original trust; or
- 26 b. Sufficient trust property shall remain in the original trust to satisfy the
- 27 currently exercisable power of withdrawal;

- 1 (g) If the original trust holds stock of an S corporation, the terms of the second
2 trust shall not prevent or eliminate an election to be a qualified subchapter S
3 trust or an electing small business trust or result in the termination of the S
4 election of such corporation;
- 5 (h) If the power to distribute principal or income in the original trust is subject to
6 an ascertainable standard, then the power to distribute income or principal in
7 the second trust shall be subject to the same or a more restrictive ascertainable
8 standard as in the original trust when the trustee exercising the power
9 described in subsection (2) of this section is a possible beneficiary under the
10 standard; and
- 11 (i) The second trust may confer a power of appointment upon a beneficiary of the
12 original trust to whom or for the benefit of whom the trustee has the power to
13 distribute principal or income of the original trust. The permissible appointees
14 of the power of appointment conferred upon a beneficiary may include
15 persons who are not beneficiaries of the original or second trust. The power of
16 appointment conferred upon a beneficiary shall be subject to KRS 381.224,
17 381.225, and 381.226 covering the time at which the permissible period of the
18 rule against perpetuities and suspension of power of alienation begins and the
19 law that determines the permissible period of the rule against perpetuities and
20 suspension of power of alienation of the original trust.
- 21 (5) The court may appoint a special fiduciary with the authority to exercise the power to
22 appoint principal or income under subsection (2) of this section.
- 23 (6) The exercise of the power to appoint principal or income under subsection (2) of
24 this section:
- 25 (a) Shall be considered an exercise of a power of appointment, other than a power
26 to appoint to the trustee, the trustee's creditors, the trustee's estate, or the
27 creditors of the trustee's estate;

- 1 (b) Shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at
2 which the permissible period of the rule against perpetuities and suspension of
3 power of alienation begins and the law that determines the permissible period
4 of the rule against perpetuities and suspension of power of alienation of the
5 original trust; and
- 6 (c) Is not prohibited by a spendthrift provision or by a provision in the original
7 trust instrument that prohibits amendment or revocation of the trust.
- 8 (7) To effect the exercise of the power to appoint principal or income under subsection
9 (2) of this section, all of the following shall apply:
- 10 (a) The exercise of the power to appoint shall be made by an instrument in
11 writing, signed and acknowledged by the trustee, setting forth the manner of
12 the exercise of the power, including the terms of the second trust and the
13 effective date of the exercise of the power. The instrument shall be filed with
14 the records of the original trust;
- 15 (b) The trustee shall give written notice of the trustee's intention to exercise the
16 power to all current beneficiaries of the original trust and all beneficiaries of
17 the oldest generation of remainder beneficiaries of the original~~[first]~~ trust, by
18 certified mail with restricted delivery and return receipt, at least sixty (60)
19 days prior to the effective date of the exercise of the power to appoint. The
20 notice shall include a copy of the instrument described in paragraph (a) of this
21 subsection;
- 22 (c) If all beneficiaries entitled to notice have received the notice as evidenced by
23 the certified mail return receipt and waive the notice period by a signed
24 written instrument delivered to the trustee, the trustee's power to appoint
25 principal or income shall be exercisable after notice is waived by all such
26 beneficiaries, notwithstanding the effective date of the exercise of the power;
- 27 (d) A current beneficiary or a beneficiary who is not a current beneficiary but is a

1 member of the oldest generation of the remainder beneficiaries of the original
2 trust may, no later than thirty (30) days from the date of receiving notice under
3 paragraph (b) of this subsection, commence a judicial proceeding pursuant to
4 KRS 386B.2-010 to object to the proposed exercise of the power under
5 subsection (2) of this section. In such case the proposed exercise of the power
6 shall require consent of the court; and

7 (e) In the event that a beneficiary did not receive the notice as evidenced by the
8 certified mail return receipt, and no other beneficiary has commenced a
9 proceeding under paragraph (d) of this subsection, the trustee may seek the
10 approval of the District Court to exercise the power.

11 (8) Nothing in this section shall be construed to create or imply a duty of the trustee to
12 exercise the power to distribute principal or income, and no inference of
13 impropriety shall be made as a result of a trustee not exercising the power to appoint
14 principal or income conferred under subsection (2) of this section. Nothing in this
15 section shall be construed to abridge the right of any trustee who has the power to
16 appoint property in further trust that arises under the terms of the original trust or
17 under any provision of law or under common law.

18 (9) This section shall not apply to any charitable remainder trust as defined in 26 U.S.C.
19 sec. 664(d).

20 (10) A trustee or beneficiary may commence a judicial proceeding pursuant to KRS
21 386B.2-010 to approve or disapprove of a proposed exercise of the trustee's special
22 power to appoint to a second trust pursuant to subsection (2) of this section.